



# CITY OF SANTA BARBARA

## ORDINANCE COMMITTEE AGENDA REPORT

**AGENDA DATE:** December 4, 2007

**TO:** Ordinance Committee

**FROM:** Planning Division, Community Development Department

**SUBJECT:** Medical Marijuana Dispensary Permanent Ordinance

**RECOMMENDATION:** That the Ordinance Committee review a draft Medical Marijuana Dispensary Permanent Ordinance, discuss the proposed dispensary locational and operational limitations, and provide direction to City Staff and the Planning Commission for further review of the proposed ordinance.

### DISCUSSION:

On October 3, 2007, the City Council adopted an Interim Zoning Control Ordinance Relating to Medical Marijuana Dispensaries. That Ordinance suspended the opening of any new medical marijuana dispensaries within the City until a permanent medical marijuana dispensary ordinance could be drafted, reviewed, and adopted. This review by the Ordinance Committee is the first review of the permanent ordinance (Attachment 1).

The draft permanent ordinance is modeled after those ordinances recently adopted in other cities and features a "locational control" approach based on proximity to sensitive land uses, such as schools, parks, residential zones, etc.

A full discussion of the background of the medical marijuana dispensary issue is included in Attachment 2: Council Agenda Report, September 25, 2007, regarding the Interim Ordinance.

The main feature of the proposed permanent ordinance is minimum distances between sensitive land uses and medical marijuana dispensaries. This approach is similar to the City's Adult Entertainment Ordinance, which allows adult entertainment businesses only in the C-2, C-M and M-1 zones and prohibits them in El Pueblo Viejo and within 500 feet of residential zones, religious institutions, public parks, beaches and recreation areas, schools and other adult entertainment businesses.

Because of the differences between adult entertainment businesses and medical marijuana dispensaries, Staff is proposing to allow medical marijuana dispensaries in the C-2, C-M and M-1 zones, which already allow pharmacies, and to prohibit them on lower State Street (Cabrillo to Arrellaga), within 500 feet of residential zones, schools, parks, and

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REVIEWED BY: \_\_\_\_\_ Finance \_\_\_\_\_ Attorney

Agenda Item No. _____
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other medical marijuana dispensaries. Attachment 3 is a map that shows the areas wherein medical marijuana dispensaries would be allowed.

Furthermore, Staff is proposing operational limitations: no smoking of marijuana within 200 feet of the dispensary, and business hours limited to between 9:00 am to 7:00 pm. Although these operational limitations would be difficult to enforce, Staff believes that most dispensaries would voluntarily abide by the limitations.

Throughout the discussion of the Interim Ordinance, City Staff have stated that the permanent ordinance approval could require a use permit (in some form) issued either by the Planning Commission or the Staff Hearing Officer, based on location requirements. Upon further review, because of the location and operating requirements proposed, it may be that a permit issued by the Planning Commission is not necessary, and that the medical marijuana dispensaries could be regulated either without discretionary review (similar to adult entertainment businesses) or with a Special Use permit that is heard by the Staff Hearing Officer and appealable to the Planning Commission.

The reasons that Staff believes that the sort of subjective discretionary review which occurs for a CUP may not be necessary are: 1. in allowing medical marijuana dispensaries, the City is merely imposing zoning regulations on something which is otherwise allowed by state law; 2. the locational and operational limitations are such that they ensure compatibility with neighborhoods and are not detrimental to public health, safety and welfare; and 3. most likely, medical marijuana dispensaries will occupy existing buildings and parking won't be an issue because parking for a medical marijuana dispensary is the same as for other retail uses.

The locational, operational, and permitting aspects of this draft ordinance are proposed for discussion purposes, and Staff requests that the Ordinance Committee discuss these aspects and provide direction for the Planning Commission and Staff.

## **NEXT STEPS**

After this Ordinance Committee meeting, Staff will refine the proposed Ordinance in response to the Committee's direction and hold a public hearing at the Planning Commission on a recommendation to the Ordinance Committee. After the Planning Commission hearing, the proposed Ordinance will be returned to the Ordinance Committee for a recommendation to City Council.

**ATTACHMENTS:**

1. Draft Medical Marijuana Dispensary Permanent Ordinance
2. Council Agenda Report, September 25, 2007
3. Area map

**PREPARED BY:** Danny Kato, Senior Planner II

**SUBMITTED BY:** Dave Gustafson, Acting Community Development Director

**APPROVED BY:** City Administrator's Office

**ATTACHMENT 1**

**DRAFT FOR COMMENT**

**December 4, 2007**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE COUNCIL OF THE  
CITY OF SANTA BARBARA AMENDING THE  
MUNICIPAL CODE BY ADDING CHAPTER  
28.80 ESTABLISHING REGULATIONS AND  
PROCEDURES FOR MEDICAL CANNABIS  
DISPENSARIES.**

**SECTION 1.** Title 28 of the Santa Barbara Municipal Code is amended by adding a new chapter, Chapter 28.80 entitled "Medical Cannabis Dispensaries," which reads as follows:

**Section 28.80.010 Findings.**

The City Council adopts the ordinance codified in this chapter based upon the following findings and determinations:

A. The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq.) entitled "The Compassionate Use Act of 1996" (Act).

B. The intent of Proposition 215 was to enable persons residing in the State of California who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.

C. The State enacted SB 420 in 2004, being Sections 11362.7 et seq., of the Health and Safety Code, being identified as the Medical Cannabis Program, (Program), to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the Program.

D. To protect the public health, safety, and welfare, it is the desire of the City Council to modify the City Code consistent with the Program, regarding the location and operation of medical cannabis dispensaries.

E. It is the City Council's intention that nothing in this chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, to otherwise permit any activity that is lawfully and constitutionally prohibited under that Act.

F. It is the City Council's intention that nothing in this chapter shall be construed to do any of the following: 1. to allow persons to engage in conduct that endangers others or causes a public nuisance; 2. to allow the use of cannabis for non-medical purposes; or 3. to allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal and not permitted by state law.

G. Pursuant to California Health and Safety Code Section 11362.71 et seq., the State Department of Health, acting by and through the state's counties, is to be responsible for establishing and maintaining a voluntary medical cannabis identification card program for qualified patients and primary caregivers.

H. California Health and Safety Code Section 11362.71(b) requires every county health department, or its designee, to implement a procedure to accept and process applications from those seeking to join the identification program in the matters set forth in Section 11362.71 et seq.

I. This chapter is found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b) (3) in that the Council finds and determines that there is nothing in this chapter or its implementation that could foreseeably have any significant effect on the environment.

J. That this chapter is compatible with the general objectives of the general plan and any applicable specific plan, in that this use would be conditionally permitted in commercial and industrial districts, being similar to other permitted and conditionally permitted uses, such as pharmacies and medical clinics, and in that the use will be subject to strict review and conditions.

K. That this chapter is compatible with the public convenience, general welfare and good land use practice, in that medical marijuana dispensaries address a medical need in the community, and in that the use will be subject to rigorous review and conditions.

L. That this chapter will not be detrimental to the public health, safety and general welfare, in that uses will be subject to careful review, that because of the small area and population of Santa Barbara, lack of experience with this use, and potential for adverse effects, dispensaries would be limited in number, and would be subject to strict operating requirements, limiting potential negative effects.

M. That this chapter will not adversely affect the orderly development of property, in that there would be absolute limits on the number of dispensaries, dispensaries would be subject to a careful review process, and strict operating requirements would be imposed.

#### **Section 28.80.020 Purpose and Intent.**

It is the purpose and intent of this chapter to regulate the locations of medical cannabis dispensaries in order to promote the health, safety, morals, and general welfare of residents and businesses within the City. It is neither the intent nor the effect of this chapter to condone or legitimize the use of cannabis except as allowed by state law.

#### **Section 28.80.030 Definitions.**

For the purpose of this chapter, the following words and phrases shall have the following meanings:

**A. Applicant.** A person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

**B. Drug Paraphernalia.** As defined in California Health and Safety Code Section 11362.5, and as may be amended from time to time.

**C. Identification Card.** As defined in California Health and Safety Code Section 11362.5 et seq., and as may be amended from time to time.

**D. Medical Cannabis Dispensing Collective or Dispensary.** Any association, cooperative, affiliation, or collective of persons where multiple qualified patients or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the

lawful retail distribution of medical cannabis.

"Dispensary" shall include any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to or distributed by or to two or more of the following: a primary caregiver or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A dispensary shall not include dispensing by primary caregivers to qualified patients in the following locations so long as the location of the clinic, health care facility, hospice, or residential care facility is otherwise permitted by the Municipal Code or by applicable state laws:

1. a clinic licensed pursuant to Chapter 1 of Division 2 of the state Health and Safety Code;
2. a health care facility licensed pursuant to Chapter 2 of Division 2 of the state Health and Safety Code;
3. a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the state Health and Safety Code;
4. residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the state Health and Safety Code;
5. a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the state Health and Safety Code;

provided that any such clinic, health care facility, hospice or residential care facility complies with applicable laws including, but not limited to, Health and Safety Code Section 11362.5.

**E. Permittee.** The person to whom either a dispensary permit is issued by the City and who is identified in California Health and Safety Code Section 11362.7, subdivision (c) or (d), or (e) or (f).

**F. Person.** An individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

**G. Person with an Identification Card.** As set forth in California Health and Safety Code Section 11362.5 et seq., and as amended from time to time.

**H. Physician.** A licensed medical doctors including a doctor of osteopathic medicine as defined in the California Business and Professions Code.

**I. Primary Caregiver.** As defined in California Health and Safety Code Section 11362.5 et seq., and it as may be amended.

**J. Qualified Patient.** As defined in California Health and Safety Code Section 11362.5 et seq., and as it may be amended from time to time.

**K. School.** An institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes an elementary school, middle or junior high school, senior high school, or any special institution of education for persons under the age of eighteen years, whether public or private.

#### **28.80.040 Dispensary Permit Required to Operate.**

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City the operation of a dispensary unless the person first obtains and continues to maintain in full force and effect a Dispensary Use Permit issued by the City Staff Hearing Officer pursuant to this Chapter, or by the Planning Commission on an appeal from a decision by the Staff Hearing Officer.

#### **28.80.050 Term of Dispensary Permits and Required Renewal.**

**A. Term of Permit.** A Dispensary Permit issued by the City under this Chapter shall expire three years following the date of its issuance, unless renewed prior to its expiration.

**B. Term of Renewal.** Use Permits may be renewed by the Community Development Director for additional three year periods upon application by the permittee, unless the permit has been suspended or revoked in accordance with the provisions of this Chapter prior to its renewal.

**C. Processing of Renewals.** Applications for renewal shall be made at least 60 days before the expiration date of the permit and shall be accompanied by the nonrefundable renewal application fee referenced herein. Applications for renewal shall be acted on in the same manner as provided herein for action upon applications for original dispensary permits.

**D. Expiration of Existing Permit.** Applications for renewal made less than 60 days before the expiration date of the prior dispensary permit shall not stay the expiration date of the permit.

#### **28.80.060 Business License Tax Liability.**

An operator of a dispensary shall be required to apply for and obtain a Business Tax Certificate pursuant to Chapter 5.04. as a prerequisite to obtaining a permit pursuant to the terms of this Chapter, as required by the State Board of Equalization. Dispensary sales shall be subject to sales tax in a manner required by state law.

#### **28.80.070 Imposition of Dispensary Permit Fees.**

Every application for a dispensary permit or renewal shall be accompanied by an application fee, in an amount established by resolution of the City Council from time to time. This application or renewal fee shall not include the standard City fees for fingerprinting, photographing, and background check costs and shall be in addition to any other business license fee or permit fee imposed by this Code or other governmental agencies.

#### **28.80.080 Limitations on the Permitted Location of a Dispensary.**

**A. Permissible Zoning for Dispensaries.** A dispensary may only be located within the C-2, C-M, or M-1 zoned areas of the City as so designated in the General Plan, Title 28 of the Municipal Code, and City Zoning map.

**B. Storefront Locations.** A dispensary shall only be located in a visible store-front type location which provides good public views of the dispensary entrance, its windows, and the entrance to the dispensary premises from a public street.

**C. Areas Where Dispensaries Not Permitted.** A dispensary shall not be allowed or permitted in the following locations even if



otherwise allowed by the applicable zoning of subparagraph (A) above:

1. On a parcel located within 500 feet of a school, or a park; or
2. On a parcel having a residential unit, or on a parcel directly abutting a residentially-zoned property except a parcel zoned R-2, unless there are intervening non-residential uses between the dispensary and the residential unit, as determined appropriate by the Staff Hearing Officer.
3. On a parcel located within 500 feet of a permitted dispensary.
4. On a parcel fronting on State Street between Cabrillo Boulevard and Arrellaga Street.

**D. Locational Measurements.** The distance between a dispensary and above-listed uses shall be made in a straight line from any parcel line of the real property on which the dispensary is located to the parcel line the real property on which the facility, building, or structure, or portion of the building or structure, in which the above listed use occurs or is located.

**E. Waiver.** A waiver of the provisions in subsection (C)(2) of this section may be granted if the applicant demonstrates to the satisfaction of the Staff Hearing Officer, or the Planning Commission on appeal, that a physical barrier or similar separation condition exists which achieves the same purposes as the distance separation requirements established herein and makes the issuance of the permit otherwise appropriate.

#### **28.80.090 Operating Requirements for Dispensaries.**

Dispensary operations shall permitted and maintained only in compliance with the following day-to-day operational standards:

**A. Criminal History.** A dispensary permit applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority over a dispensary on behalf of the applicant shall not have been convicted of a felony, or of a misdemeanor involving moral turpitude, or be on probation or parole for a criminal drug offense.

**B. Minors.** It is unlawful for any dispensary permittee, operator, or other person in charge of any dispensary to employ any person who is not at least 18 years of age. Persons under the age of 18 shall not be allowed on the premises of a dispensary unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or guardian. The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that person under the age of 18 are precluded from entering the premises unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or guardian.

**C. Operating Hours.** Unless the Staff Hearing Officer imposes more restrictive hours due to specific considerations for a particular application, a dispensary shall only be operated during the following days and hours:

1. Sunday through Thursday: 7:00 a.m. to 8:00 p.m.
2. Friday and Saturday: 9:00 a.m. to 7:00 p.m.
3. Closed on official federal holidays.

**D. Dispensary Size and Access.** The following dispensary and access restrictions shall apply to all dispensaries permitted by the Chapter:

1. The dispensary size shall not exceed 1,000 square feet exclusive of restroom facilities, unless specifically authorized by the Staff Hearing Officer. Dispensaries shall be limited in size, as deemed appropriate and necessary, to best serve patient needs within the intent of this Chapter and to reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses, and demands on City police services.
2. A dispensary shall not be enlarged in size (i.e., floor area or number of patients) without a prior approval from the Staff Hearing Officer amending the existing dispensary permit pursuant to the requirements of this Chapter.
3. The entrance into the dispensary building shall be locked at all times with entry strictly controlled; A viewer or video camera shall be installed in the door that allows maximum angle of view of the exterior entrance.
4. Dispensary personnel shall be responsible for monitoring the real property of the dispensary site activity (including the adjacent public sidewalk and rights-of-way) for the purposes of controlling loitering.

5. Only dispensary staff, primary caregivers, qualified patients and persons with bona fide purposes for visiting the site shall be permitted within a dispensary.

6. Potential patients or caregivers shall not visit a dispensary without first having obtained a valid written recommendation from their physician recommending use of medical cannabis.

7. Only a primary caregiver and qualified patient shall be permitted in the designated dispensing area along with dispensary personnel.

8. Restrooms shall remain locked and under the control of Dispensary management at all times.

**F. Dispensing Operations.** The following restrictions shall apply to all dispensing operations by a dispensary:

1. A dispensary shall dispense medical cannabis to meet monthly medication needs of qualified patients, similar to typical pharmacy operations. The dispensary shall have policies to discourage daily or weekly visits by patients as a routine practice.

2. A dispensary shall only dispense to qualified patients or caregivers with a currently valid physicians approval or recommendation in compliance with the criteria in California Health and Safety Code Section 11362.5 et seq.. Dispensaries shall require such persons to provide valid official identification, such as a Department of Motor Vehicles driver's license or State Identification Card.

3. Prior to dispensing medical cannabis, the dispensary shall obtain a verification from the recommending physician's office personnel that the individual requesting medical cannabis is a qualified patient.

4. A dispensary shall not have a physician on-site to evaluate patients and provide a recommendation or prescription for the use of medical cannabis.

**G. Consumption Restrictions.** The following medical marijuana consumption restrictions shall apply to all permitted dispensaries:

1. Cannabis shall not be consumed by patients on the premises of the dispensary.

The term "premises" includes the actual building, as well as any accessory structures, parking lot or parking areas, or other surroundings within 200 feet of the dispensary's entrance. Dispensary employees who are qualified patients may consume cannabis within the enclosed building area of the premises, provided such consumption occurs via oral consumption or vaporization, but not by means of smoking.

2. Dispensary operations shall not result in illegal redistribution of medical cannabis obtained from the dispensary, or use or distribution in any manner which violates state law.

**H. Retail Sales of Other Items by a Dispensary.** The retail sales of dispensary related or marijuana use items may be allowed under the following circumstances:

1. With the approval of the Staff Hearing Officer, a dispensary may conduct or engage in the commercial sale of specific products, goods, or services in addition to the provision of medical cannabis on terms and conditions consistent with this chapter and applicable law.

2. No dispensary shall sell or display any drug paraphernalia or any implement that may be used to administer medical cannabis, with the exception of vaporizers.

3. A dispensary shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.5 et seq.

**I. Operating Plans.** In connection with a permit application under this Chapter, the applicant shall provide, as part of the permit application, a detailed Operations Plan and, upon issuance of the dispensary permit, shall operate the dispensary in accordance with the Operations Plan as such plan is approved by the Staff Hearing Officer:

- 1. Floor Plan.** A dispensary shall have a lobby waiting area at the entrance to the dispensary to receive clients, and a separate and secure designated area for dispensing medical cannabis to qualified patients or designated caregivers. The primary entrance shall be located and maintained clear

of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

**2. Storage.** A dispensary shall have suitable locked storage on premises, identified and approved as a part of the security plan, for after-hours storage of medical cannabis.

**3. Minimum Staffing Levels.** The dispensary premises shall be staffed with at least one person during all hours of operation who shall not be responsible for dispensing medical cannabis.

**4. Security Plans.** A dispensary shall provide adequate security on the premises, in accordance with a security plan approved by the Chief of Police and as reviewed by the Staff Hearing Officer, including provisions for adequate lighting and alarms, in order to insure the safety of persons and to protect the premises from theft.

**5. Security Cameras.** Security surveillance cameras shall be installed to monitor the main entrance and exterior of the premises to discourage and to report loitering, crime, illegal or nuisance activities. Security video shall be maintained for a period of not less than 72 hours.

**6. Alarm System.** Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition within the dispensary at all times.

**7. Emergency Contact.** A dispensary shall provide the Chief of Police with the name, cell phone number, and facsimile number of an on-site community relations staff person to whom the City may provide notice of any operating problems associated with the dispensary.

**J. Dispensary Signage and Notices.**

1. A notice shall be clearly and legibly posted in the dispensary indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the dispensary is prohibited.

2. Signs on the premises shall not obstruct the entrance or windows.

3. Address identification shall comply with Fire Department illuminated address signs requirements.

4. Business identification signage shall be limited to that needed for identification only, consisting of a single window sign or wall sign that shall not exceed six square feet in area or 10 percent of the window area, whichever is less. Signs shall comply with all ordinances and not contain any logos or information that identifies, advertises or lists the services offered.

**K. Employee Records.** Each owner or operator of a dispensary shall maintain a current register of the names of all volunteers and employees currently working at or employed by the dispensary, and shall disclose such registration for inspection by any City officer or official but only for the purposes of determining compliance with the requirements of this chapter.

**L. Patient Records.** A dispensary shall maintain records of all patients and primary caregivers using only the identification card number issued by the county, or its agent, pursuant to California Health and Safety Code Section 11362.71 et seq., as a protection of the confidentiality of the cardholders, or a copy of the written recommendation from a physician or doctor of osteopathy stating the need for medical cannabis. Such records may be maintained on or off-site, and shall be made available for inspection by any City officer or official for purposes of determining compliance with the requirements of this chapter.

**M. Staff Training.** Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with state and local law, and properly trained or professionally-hired security personnel.

**N. Site Management.**

1. The operator of the establishment shall take all reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours if directly related to the patrons of the subject dispensary.

2. The operator shall take all reasonable steps to reduce loitering in public areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours.

3. The operator shall provide patients with a list of the rules and regulations governing medical cannabis use and consumption within the City and recommendations on sensible cannabis etiquette.

**O. Trash, Litter, Graffiti.**

1. The operator shall clear the sidewalks adjoining the premises plus 10 feet beyond property lines along the street as well as any parking lots under the control of the operator as needed to control litter, debris and trash.

2. The operator shall remove all graffiti from the premises and parking lots under the control of the operator within 72 hours of its application.

**P. Compliance with Other Requirements.** The dispensary operator shall comply with all provisions of all local, state or federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

**Q. Display of Permit.** Every dispensary shall display at all times during business hours the permit issued pursuant to the provisions of this chapter for such dispensary in a conspicuous place so that the same may be readily seen by all persons entering the dispensary.

**R. Alcoholic Beverages.** No dispensary shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

**S. Parking Requirements.** Dispensaries shall be considered office uses relative to the parking requirements imposed by Section 28.90.100(I).

**28.80.100 Dispensary Permit Application - Preparation and Filing.**

**A. Application Filing.** A complete special use permit application submittal packet shall be submitted including all necessary fees and all other information and materials required by the City and this chapter, including the rules and regulations adopted pursuant to Section 28.80.150 hereof. All applications for permits shall be filed with the Community Development Department, using forms provided by the City, and

accompanied by the applicable filing fee. It is the responsibility of the applicant to provide information required for approval of the permit. The application shall be made under penalty of perjury.

**B. Eligibility for Filing.** Applications may only be filed by the owner of the subject property, or person with a lease signed by the owner or duly authorized agent allowing them to occupy the property for the intended use.

**C. Filing Date.** The filing date of any application shall be the date when the City receives the last submission of information or materials required in compliance with the submittal requirements specified herein.

**D. Effect of Incomplete Filing.** Upon notification that an application submittal is incomplete, the applicant shall be granted an extension of time to submit all materials required to complete the application within 30 days. If the application remains incomplete in excess of 30 days the application shall be deemed withdrawn and new application submittal shall be required in order to proceed with the subject request. The time period for granting or denying a permit shall be stayed during the period in which the applicant is granted an extension of time.

**E. Effect of Other Permits or Licenses.** The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a dispensary permit.

**G. Renewal.** Applications for two-year renewal shall be accompanied by the following minimum information:

1. The operator shall report the number of patients served and pay applicable fees, as required by this chapter.
2. The operator shall provide a detailed description of any adjustments and changes proposed or that have occurred in dispensary operations to address issues, or comply with laws.
3. The operator shall identify any problems encountered during operations and how they have been addressed.
4. The operator shall identify how the dispensary has managed its operations to comply with the operating requirements of this chapter and with state law.



**28.80.110 Criteria for Review of Dispensary Applications by Staff Hearing Officer.**

The Staff Hearing Officer, or the Planning Commission on appeal, shall consider the following criteria in determining whether to grant or deny a dispensary permit, including with respect to applications for permit renewals:

- A. That the dispensary permit is consistent with the intent of Proposition 215 and related provisions of the state Health & Safety Code, the provisions of this chapter and the City Code, including the application submittal and operating requirements herein.
- B. That the dispensary location is not identified as having significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the Police Department).
- C. That there have not been significant numbers of calls for police service, crimes or arrests in the area or to an existing dispensary location.
- D. That all required application materials have been provided and the dispensary has operated successfully in a manner that shows it would comply with the operating requirements and standards specified in this chapter.
- E. That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.
- F. That an appropriate limit on size of the dispensary has been established and the requested permit would not exceed limitations on number of patients or permits allowed by this chapter.
- G. That issuance of a dispensary permit for the size requested is justified to meet needs of community.
- H. That issuance of the dispensary permit would serve needs of City residents within a proximity to this location.
- I. That the location is not prohibited by the provisions of this chapter or any local or state law, statute, rule or regulation and no significant nuisance issues or problems are anticipated or resulted and that compliance with other applicable requirements of the City's Zoning Ordinance will be accomplished.

J. That the site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems and as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises; the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

K. That all reasonable measures have been incorporated into the plan or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, cannabis use in public, or creation of a public or private nuisance, or interference of the operation of another business.

L. That the dispensary would not adversely affect the health, peace, or safety of persons living or working in the surrounding area, overly burden a specific neighborhood, or contribute to a public nuisance; or that the dispensary has resulted in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct, or police detentions or arrests.

M. That any provision of the Municipal Code or condition imposed by a City issued permit, or any provision of any other local, or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws has not been and will not be violated.

N. That the applicant has not knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

O. That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

**28.80.120 Appeal from Staff Hearing Officer Determination.**

**A. Appeal to the Planning Commission.** An applicant aggrieved by the Staff Hearing Officer's decision to issue, issue with conditions, or to deny a permit may appeal such decision to the City Planning Commission by filing an appeal pursuant to the requirements of subparagraph (B) of Section 28.05.020 of the Municipal Code.

**B. Planning Commission Appeal.** Notwithstanding subparagraph (C) of Section 28.05.020 and Section 1.30.050, a decision by the Planning Commission on appeal of the Staff Hearing Officer pursuant to this Chapter shall be final and may not be appealed to the City Council.

#### **28.80.130 Suspension and Revocation by Planning Commission.**

**A. Authority to Suspend or Revoke a Dispensary Permit.**

Consistent with Section 28.87.360, any dispensary permit issued under the terms of this chapter may be suspended or revoked by the Planning Commission when it shall appear to the Commission that the permittee has violated any of the requirements of this chapter or the dispensary is operated in a manner that violates the provisions of this chapter, including the operational requirements of this Chapter, or in a manner which conflicts with state law.

**B. Suspension or Revocation - Written Notice.** Except as otherwise provided in this chapter, no permit shall be revoked or suspended by virtue of this chapter until written notice of the intent to consider revocation or suspension of the permit has been served upon the person to whom the permit was granted at least ten (10) days prior to the date set for such review and reasons for the proposed suspension or revocation have been provided to the permittee. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery to the permittee, or by depositing such notice in the U.S. mail in a sealed envelope, postage prepaid, (via regular mail and return receipt requested), addressed to the person to be notified at his or her address as it appears in his or her application for a dispensary permit.

#### **28.80.140 Transfer of Dispensary Permits.**

**A. Permit - Site Specific.** A permittee shall not operate a dispensary under the authority of a dispensary permit at any place other than the address of the dispensary stated in the application for the permit. All dispensary permits issued by the City pursuant to this chapter shall be non-transferable.

**B. Transfer of a Permitted Dispensary.** A permittee shall not transfer ownership or control of a dispensary or transfer a dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Community Development Department in accordance with this all provisions of this chapter accompanied by the required application fee.

**C. Request for Transfer with a Revocation or Suspension Pending.** No dispensary permit may be transferred (and no permission for a transfer may be issued) when the Community Development Department has notified in writing the permittee that the permit has been or may be suspended or revoked and a notice of such suspension or revocation has been provided.

**D. Transfer without Permission.** Any attempt to transfer a permit either directly or indirectly in violation of this section is declared void, and the permit shall be deemed revoked.

#### **Section 28.80.150 Chapter Rules and Regulations.**

The Community Development Director shall develop standard rules and regulations for the administrative implementation of this Chapter and with respect to those dispensary permit application materials which are required by this chapter which rules and regulations shall be approved by resolution of the City Council.



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** September 25, 2007

**TO:** Mayor and Councilmembers

**FROM:** City Attorney's Office

**SUBJECT:** Interim Zoning Control Ordinance Relating To Medical Marijuana Dispensaries

### RECOMMENDATION:

That Council introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Amending Title 28 of the Santa Barbara Municipal Code by Adding Chapter 28.80 Imposing a Conditional Use Permit Requirement on Medical Marijuana Dispensaries to the City's Zoning Ordinance.

### DISCUSSION:

On August 14, 2007, the City Council directed the City Attorney and Community Development staff to prepare a draft ordinance to suspend the opening of any further medical marijuana dispensaries within the City. As required by the state Planning and Zoning Law, this draft "Interim Control Ordinance" temporarily prohibiting the establishment of any new medical marijuana dispensaries within the City was submitted to the Planning Commission for its review and comment under the authority of the state Government Code §§ 65854 and 65855 on Thursday, September 6, 2007. Appropriate and minor editing revisions were requested by the Commission but the substance of the proposed ordinance was not changed.

The proposed Interim Medical Marijuana Dispensary Control Ordinance prohibits establishment of new medical marijuana dispensaries, on a citywide basis, for a period of six months beginning as of August 14, 2007. During this "Interim Control" period, the Community Development Department staff and the City Attorney's office will work to develop a draft permanent SBMC Title 28 ordinance regulating medical marijuana dispensaries, most likely by suggesting a conditional use permit ("CUP") requirement. As required by state law, Staff will also arrange for the permanent ordinance to be reviewed at a noticed public hearing by the Planning Commission and considered by the Council Ordinance Committee. Eventually, we anticipate that the permanent ordinance will be considered for adoption by the City Council in early 2008.

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REVIEWED BY: \_\_\_\_\_ Finance \_\_\_\_\_ Attorney

Agenda Item No. \_\_\_\_\_

## **BACKGROUND INFORMATION:**

Under the federal Controlled Substances Act, enacted by the United States Congress in 1970, cannabis (marijuana) is classified as a Schedule I controlled substance. This classification is based on a determination that marijuana (1) has a high potential for abuse, (2) has no currently accepted use for medical treatment, and (3) is not accepted as safe, even when used under medical supervision. This federal law makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States. Use of marijuana is also prohibited under the "California Uniform Controlled Substances Act," enacted by the state Legislature in 1972.

At an election held on November 5, 1996, the voters of the state of California approved Proposition 215 (the "Compassionate Use Act") which is designed to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited and specified circumstances. In 2003, in an effort to answer some of the implementation questions left unaddressed by Prop 215, the California state Legislature enacted Senate Bill 420. SB 420, by creating a process whereby each county health commissioner issues medical marijuana patient photo identification cards, makes it easier for qualified medical marijuana patients to avoid being arrested for the possession and use of small amounts of marijuana. However, SB 420 did not enact state statutes which legalize marijuana "dispensaries" per se - especially those that are operated on a "for profit" basis. In this regard, SB 420 creates the defined role of a "primary caregiver" who may assist a "qualified medical marijuana patient" in obtaining minor amounts of medical marijuana. However, since the enactment of SB 420 and the recent growth of "medical marijuana dispensaries throughout California, it has become apparent to many cities and counties that it is often necessary to formulate local land use and zoning regulations (consistent with state laws) governing the operation of appropriate and allowed medical marijuana dispensaries acting as "primary caregivers."

This "land use" (i.e., or locational regulatory approach) is generally intended to protect residents, adjacent businesses, and patients from the adverse secondary effects of these dispensary establishments. This methodology is very much like the land use and zoning regulations which are typically applicable to the operation of an adult business.

The City's Community Development and Finance Department report that, as of the summer of 2007, there are apparently 10 or so known medical marijuana dispensaries operating at fixed business/retail locations within the city of Santa Barbara. Based on concerns raised by neighbors, a few of these dispensaries may be located in close proximity to sensitive uses such as day care centers, parks, schools, and residentially used properties. The Police Department also reports that there has been a recent increase in crime at some dispensaries including theft and robbery. The Police Department has also received increased complaints from neighbors, business owners, and concerned citizens about loitering problems possibly associated with a few of these dispensaries.

Due to the recent apparent increase in such establishments within the City, and the amount of time required to prepare and adopt permanent zoning regulations, as indicated, an Interim Control Ordinance was requested by the City Council in order to place temporary restrictions on the establishment of any new medical marijuana dispensaries until permanent City land use regulations are considered and possibly adopted.

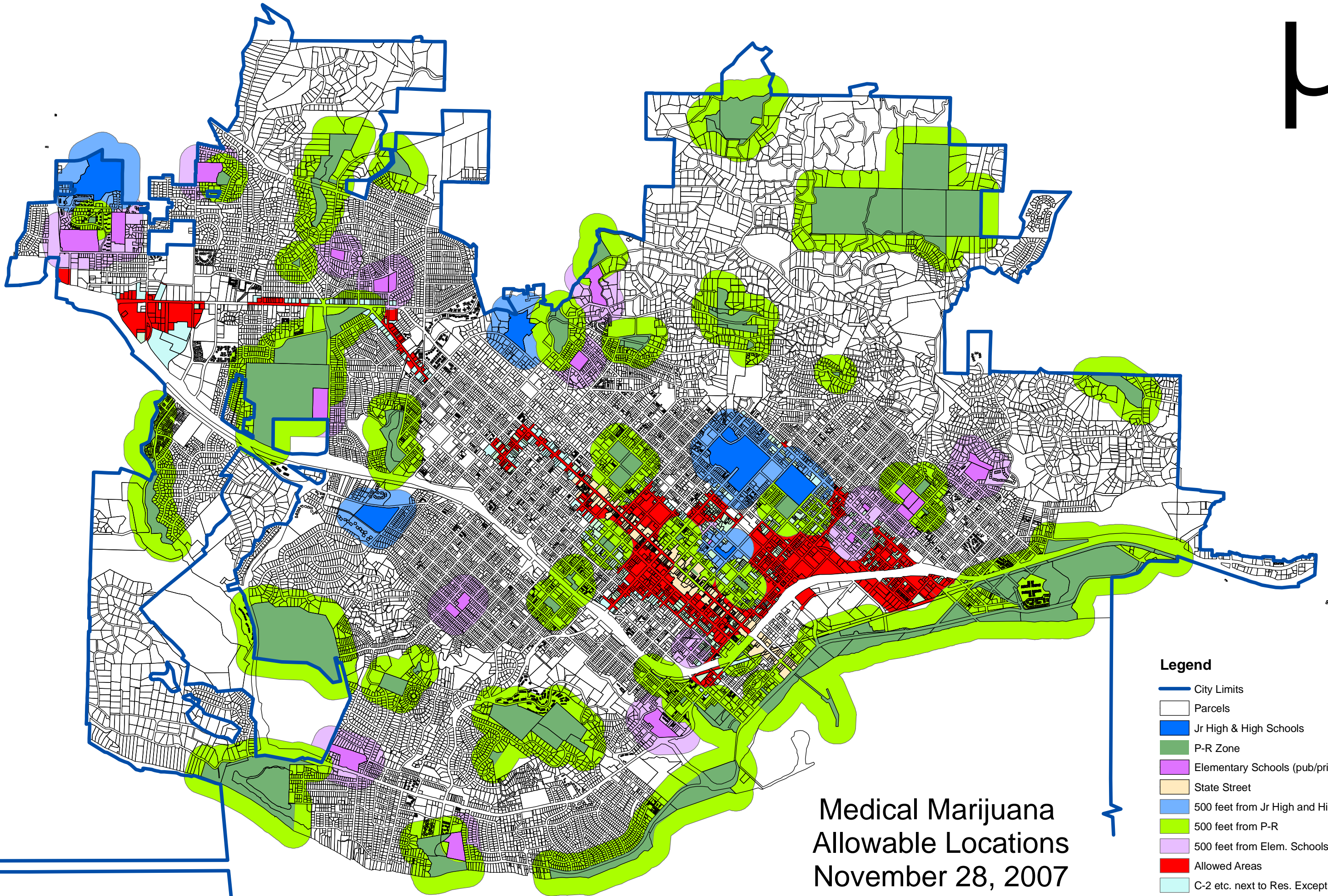
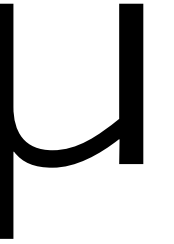
The draft interim ordinance attached to this report also creates a requirement that existing dispensaries which opened prior to August 14, 2007 submit specific documents to the City informing the City of their existence and establishing their pre-existing legal status and thus exempting them for the interim prohibition. Otherwise, no new dispensaries will be allowed during this 6 month interim period. The ordinance's exemption provision states that the existing medical marijuana dispensaries are to submit copies of specific documents and register with the Police Department within 60 days of the effective date of the ordinance in order to prove their pre-existing legal status.

This draft Interim Control Ordinance should allow the City the time it needs to undertake the critically important task of developing a comprehensive strategy for appropriately regulating medical marijuana dispensaries, possibly through the use of a CUP requirement. This method should ensure that this important legislative opportunity is fully examined in depth while protecting the status quo by not permitting new medical marijuana dispensaries to be established throughout the City. The proposed ordinance has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines as an ordinance which have no negative impact on the physical environment and, as a temporary enactment, under CEQA Guideline Section 15305 as a "minor alteration in land use limitations."

**SUBMITTED BY:** Stephen P. Wiley, City Attorney

**APPROVED BY:** City Administrator's Office





Medical Marijuana  
Allowable Locations  
November 28, 2007

**Legend**

- City Limits
- Parcels
- Jr High & High Schools
- P-R Zone
- Elementary Schools (pub/priv)
- State Street
- 500 feet from Jr High and High Schools
- 500 feet from P-R
- 500 feet from Elem. Schools (Pub&Priv)
- Allowed Areas
- C-2 etc. next to Res. Except R-2
- Residential Land Use in C-2 etc.